

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Preterm-Cleveland, et al.	:	Case No. 1:19-cv-360
	:	
Plaintiff,	:	Judge: Michael R. Barrett
v.	:	
	:	
David Yost, et al.	:	
	:	
Defendants.	:	

**DECLARATION OF SHARON A. LINER, M.D., IN SUPPORT OF
PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER**

I, Sharon A. Liner, M.D., declare as follows:

1. I am a board-certified family physician with 16 years of experience in women's health. I am licensed to practice medicine in the state of Ohio. I earned a B.S. in Medical Technology from Michigan State University and graduated from medical school at Michigan State University, College of Human Medicine. I completed my residency in Family Medicine at the University of Cincinnati.
2. I am the Medical Director of Planned Parenthood Southwest Ohio Region (PPSWO). I am also PPSWO's Director of Surgical Services, a position I have held for nearly 15 years. I have worked as a physician for PPSWO since 2004, providing reproductive health care to patients. PPSWO operates a licensed ambulatory surgical facility in Cincinnati, Ohio.
3. In my current roles as the Director of Surgical Services and Medical Director at PPSWO, I oversee all medical services provided at PPSWO, including supervision of the physicians and clinicians who provide that care, including abortion. I also am responsible for developing PPSWO's policies and procedures.

4. Since 2002, I have provided abortions in outpatient settings. In my current practice, I provide medication abortions up to 70 days (or 10 weeks) of pregnancy as measured from the first day of the woman's last menstrual period (LMP) and surgical abortions through 21 weeks 6 days LMP.

5. A true and correct copy of my curriculum vitae is attached as Exhibit A.

Director's Order and Attorney General's Enforcement Threats

6. On March 17, 2020, the Director of the Ohio Department of Health, Dr. Amy Acton, issued an order barring all "non-essential surgeries and procedures" beginning at 5 p.m. on March 18, 2020. ("Director's Order" at 4, Exhibit B). The Director's Order states that its purpose is to "preserv[e] personal protective equipment (PPE) and critical hospital capacity and resources within Ohio." *Id.* Although the order does not define PPE, I understand that term to refer to, for example, surgical masks, gloves, protective eyewear, gowns, and hair and shoe covers, which are commonly used in surgical procedures, including surgical abortions. In order to comply with the Director's Order, PPSWO is committed to following all recommendations in an effort to "flatten the curve," protect patients and staff, and maximize the availability of PPE.

7. Neither method of abortion requires extensive PPE. Medication abortion uses less PPE than surgical abortion. The process of handing patients a pill requires no PPE. Surgical abortion requires the minimal use of some or all of the following PPE: one pair of non-sterile gloves, a surgical mask, protective eyewear that can be reprocessed according to CDC guidelines, disposable and washable gowns.¹ For an ultrasound or laboratory exam, including one that accompanies medication or surgical abortion, we use only non-sterile gloves.

¹ Per CDC guidance, Plaintiffs provide patients for whom there is a concern for COVID-19 or other upper respiratory disease with a mask.

8. As required by the Director's Order, PPSWO promptly adopted a policy to implement the Director's Order, which went into effect March 18, 2020 before 5:00 p.m.² PPSWO's policy forbids the performance of "non-essential surgeries and procedures that utilize PPE" until the end of Ohio's declared emergency or the Director's Order is modified or rescinded. PPSWO's policy also requires staff to make every effort to preserve PPE during essential surgeries and procedures, including by limiting the number of individuals present who would require PPE. A true and accurate copy of PPSWO's policy is attached as Exhibit C.³

9. The policy requires PPSWO physicians to determine whether a "surgical abortion or procedure constitutes an essential surgery or procedure that may continue to be provided under the terms of the [Director's] Order." In making that determination, the policy directs physicians to consider the plain terms of the Director's Order, which states that "a surgery is essential if it cannot 'be delayed without undue risk to the current or future health of a patient' and includes, as examples of criteria to consider, the risk to the patient of rapidly worsening to severe symptoms that make the surgery time sensitive, as well as a progression of staging."

10. In addition, the policy advised physicians to consider other important factors in making that determination, including:

- a. Because "[p]regnancy has a duration of approximately forty weeks as measured from the first day of the woman's last menstrual period (LMP) and abortions are banned in Ohio beginning at 22 weeks LMP," and that "while abortion is an extremely safe medical procedure, . . . it cannot be delayed without increasing the risk to the health of the patient." (citing

² As an individual Plaintiff, I did not personally adopt such a policy, but as medical director of Plaintiff PPSWO, I am responsible for PPSWO adopting and implementing this policy. I have seen all Plaintiffs' policies and they are identical to PPSWO's.

³ Exhibit C includes PPSWO's original and revised policies.

Nat'l Acads. of Scis. Eng'g & Med., *The Safety & Quality of Abortion Care in the United States* 77–78, 162–63 (2018)).

- b. the views of the American College of Obstetricians and Gynecologists (“ACOG”), the American Board of Obstetrics & Gynecology, the American Association of Gynecologic Laparoscopists, the American Gynecological & Obstetrical Society, the American Society for Reproductive Medicine, the Society for Academic Specialists in General Obstetrics and Gynecology, the Society of Family Planning, and the Society for Maternal–Fetal Medicine, which stated that to “the extent that hospital systems or ambulatory surgical facilities are categorizing procedures that can be delayed during the COVID-19 pandemic, abortion should not be categorized as such a procedure’ because it ‘is an essential component of comprehensive health care’ and ‘a time-sensitive service for which a delay of several weeks, or in some cases days, may increase the risks [to patients] or potentially make it completely inaccessible.” (Exhibit D).
- c. the Ambulatory Surgery Center Association’s “COVID-19: Guidance for ASCs for Necessary Surgery,” dated March 19, 2020, which concurred with the American College of Surgeons’ recommendation that consideration of whether delay of a surgery during the pandemic is appropriate must account for risk to the patient of delay, “including the expectation that a delay of 6–8 weeks or more may be required to emerge from an environment in which COVID-19 is less prevalent.” (Exhibit E).

11. Abortion is *not* “a procedure that can be delayed without undue risk to the current or future health of a patient.” (quoting Director’s Order, Ex. B at 4). Delay increases the “risk of rapidly worsening to severe symptoms,” making the procedure “time sensitive.” (quoting Director’s Order, Ex. B at 4). PPSWO determined, with the ASF’s governing body’s approval, that “surgical abortion constitutes an essential surgery and may continue to be provided under the terms of the [Director’s] Order,” because “a delay in a surgical abortion will negatively affect patient health and safety.” (Ex. C p. 7).

12. Beginning with the opening of business on March 19, 2020, PPSWO implemented the policy, stopped performing all non-essential procedures, reduced as much as possible the use of PPE, and continued to emphasize that we are to act consistent with the Director’s Order.

13. On March 20, 2020, PPSWO received a letter via email from the Ohio Attorney General, stating “[o]n behalf of the Department, you and your facility are ordered to immediately stop performing non-essential and elective surgical abortions.” The letter also cautions that “[i]f you or your facility do not immediately stop performing non-essential or elective surgical abortions in compliance with the attached order, the Department of Health will take all appropriate measures.” A true and correct copy of the Attorney General’s Letter is attached as Exhibit F.

14. PPSWO responded to the Attorney General by confirming its compliance with the Director’s Order, revising its policy to make clear that physicians would determine on a case-by-case basis whether a surgical abortion or other procedure constitutes an essential surgery or procedure, and offering to share the revised policy. Because PPSWO’s physicians always determine the appropriate course of care for any patient on a case-by-case basis, this amendment

did not result in any change to PPSWO's provision of care. PPSWO implemented the revised policy on March 24, which was the first surgery day after receiving the Attorney General's Letter. If a physician determines a surgical abortion or other procedure is essential, the physician documents that determination in the patient's chart.

15. PPSWO has made other changes to minimize the use of PPE and minimize risk of exposure to COVID-19 such as extending refill prescriptions without patients coming in, reducing the number of persons in the surgery center, excluding visitors with patients unless medically required (or a parent accompanying a minor), excluding visitors who are at risk of transmitting COVID-19 after screening, maximizing telehealth services, and not offering patients surgical abortions when medication abortions are available (under 70 days of pregnancy) and are not medically contraindicated.

16. When a PPSWO patient is eligible for both surgical and medication abortion, patients are provided a medication abortion, unless surgical abortion is the more appropriate method.

ODH Investigation of Compliance

17. PPSWO did not receive any further communication from the Attorney General. On March 26, 2020, two ODH inspectors arrived at PPSWO for an unannounced inspection of a complaint, seeking information regarding PPSWO's compliance with the Director's Order. PPSWO fully cooperated with the inspection. Although the ODH inspectors would not tell PPSWO the source of the complaint, news reporting suggests the complaint came from anti-abortion activists.⁴

⁴ <https://www.fox19.com/2020/03/23/ohio-abortion-providers-ordered-stop-amid-covid-outbreak/>

18. While the first day of the inspection was still ongoing, Governor DeWine announced in a press conference that an essential abortion would be one that “is done to save someone’s life.”⁵ At the same conference, Director Acton said that ODH had “listened to the AG” and began to investigate “violations [of the Order] across the state,” including at abortion clinics.

19. That same day, Attorney General Yost issued a press release vowing to “take quick enforcement action” once ODH’s investigation was completed.⁶

20. The two inspectors returned on March 27, 2020 to continue their investigation. After two days of inspections, the inspectors left without telling PPSWO whether or not they had found violations of the Director’s Order or any other regulation. This was a break with established ODH practice and procedure of informing PPSWO of the inspection results before leaving. The inspectors said their superiors would make that determination at an unspecified later date and ODH would notify PPSWO of the findings.

21. Applying the Director’s Order to ban surgical abortion indefinitely, by considering surgical abortion “non-essential,” singles out patients seeking abortion to bear a far heavier burden than any other patients in need of a time-sensitive surgery or procedure whose delay could have devastating, long-lasting effects on health and well-being. Such enforcement of the Director’s Order amounts to a de facto ban on abortion for all patients who are more than ten weeks pregnant (when medication abortion, an alternative to surgical abortion for some but not all patients, is no longer available), and a ban on abortion at even earlier gestational points among patients for whom medication abortion cannot appropriately be used.

⁵ <https://www.ideastream.org/gov-mike-dewine-coronavirus-update-march-26-2020>
Starting at 54:00.

⁶ Attorney General Yost press release is attached as Exhibit G.

PPSWO's Provision of Abortion

22. Legal abortion is one of the safest medical procedures in the United States.⁷ There are two main methods of abortion: medication abortion and surgical abortion. Both methods are effective in terminating a pregnancy.⁸ Complications from both medication and surgical abortion are exceedingly rare, and when they occur they can usually be managed in an outpatient clinic setting, either at the time of the abortion or in a follow-up visit. Major complications—defined as complications requiring hospital admission, surgery, or blood transfusion—occur in less than one-quarter of one percent (0.23%) of all abortion cases: in 0.31% of medication abortion cases, in 0.16% of first-trimester surgical abortion cases, and in 0.41% of surgical cases in the second trimester or later.⁹ Abortion-related emergency room visits constitute just 0.01% of all emergency room visits in the United States.¹⁰

23. Medication abortion involves a combination of two pills: mifepristone and misoprostol.¹¹ The patient takes the first medication in the health center and then, typically twenty-four to forty-eight hours later, takes the second medication at a location of their choosing, most often at their home, after which they expel the contents of the pregnancy in a manner similar to a miscarriage.

24. Current medical evidence demonstrates that medication abortion is safe and effective through eleven weeks of pregnancy as measured from the first day of a pregnant patient's

⁷ Nat'l Acads. of Scis. Eng'g & Med., The Safety & Quality of Abortion Care in the United States 77–78, 162–63 (2018).

⁸ Luu Doan Ireland et al., Medical Compared With Surgical Abortion for Effective Pregnancy Termination in the First Trimester, 126 *Obstetrics & Gynecol.* 22 (2015).

⁹ Ushma Upadhyay, et al., Incidence of Emergency Department Visits and Complications After Abortion, 125 *Obstetrics & Gynecol.* 175 (2015).

¹⁰ Ushma Upadhyay, et al., Abortion-related Emergency Room Visits in the United States: An Analysis of a National Emergency Room Sample, 16(1) *BMC Med.* 1, 1 (2018).

¹¹ Nat'l Acads., *supra* note 7, at 51.

last menstrual period (“LMP”). However, Ohio law (Ohio Rev. Code § 2919.123) restricts the first drug used in medication abortion to use as described in the federally approved label, which is for pregnancies less than ten weeks. See FDA, Mifeprex (mifepristone) Information (last updated Feb. 5, 2018), <https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/mifeprex-mifepristone-information>. Accordingly, although PPSWO would provide medication abortion up to eleven weeks LMP if it could legally do so, it currently cannot provide this method of abortion in Ohio beyond ten weeks LMP (through seventy days).

25. Ohio law also requires that medication abortion be preceded by an ultrasound at least twenty-four hours in advance, Ohio Rev. Code § 2919.193, .194, even though this step is not medically necessary in every case.

26. Surgical abortion is not what is commonly understood to be “surgery”; it involves no incision, no need for general anesthesia, and no requirement of a sterile field. Up to approximately fifteen weeks LMP, clinicians use the aspiration abortion technique, which involves dilating the natural opening of the cervix using medications and/or small, expandable rods, inserting a narrow, flexible tube into the uterus, and emptying the uterus through suction. This procedure typically takes five to ten minutes. To perform abortions after that gestational point in pregnancy, clinicians must dilate the cervix further and use instruments to empty the uterus, which is called the dilation and evacuation (“D&E”) technique. Later in the second trimester, the clinician may begin cervical dilation the day before the procedure itself. PPSWO performs surgical abortion up to twenty-one weeks, six days LMP.

27. For some patients with pregnancies less than ten weeks LMP, medication abortion is not available because it is contraindicated or there are other factors that necessitate a surgical

abortion, such as where the patient has an allergy to the medications or other medical conditions, such as a bleeding disorder or low hemoglobin, that make surgical abortion relatively more safe.¹²

28. According to the latest data from ODH, 55.7% of Ohio abortions in 2018 occurred before nine weeks LMP, while 44.3% occurred at or after nine weeks. More than 56% of abortions in the state were surgical abortions.¹³

29. PPSWO has performed 124 medication abortions and 493 surgical abortions during the first two months on 2020; 389 of the surgical abortions were before 10 weeks LMP and 104 were 10 weeks or greater. In 2019 PPSWO performed 769 medication abortions and 2,561 surgical abortions; 1731 of the surgical abortions were before 10 weeks LMP and 830 were 10 weeks or greater.

30. Individuals seek abortion for a multitude of complicated and personal reasons, which may all be compounded by the current pandemic. By way of example, some patients have abortions because they conclude it is not the right time to become a parent or have additional children,¹⁴ they desire to pursue their education or career, or they lack the necessary financial resources or a sufficient level of partner or familial support or stability.¹⁵ Other patients seek

¹² Nat'l Acads., supra note 7, at 51–52.

¹³ https://odh.ohio.gov/wps/wcm/connect/gov/534ddb3a-febd-4e2a-99ee-90249240bcdd/VS-AbortionReport2018.pdf.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE.Z18_M1HGGIK0N0JO00QO9DDDDM3000-534ddb3a-febd-4e2a-99ee-90249240bcdd-mS77yg-

¹⁴ Indeed, a majority of women having abortions in the United States already have at least one child. Guttmacher Inst., Induced Abortions in the United States 1 (2018), https://www.guttmacher.org/sites/default/files/factsheet/fb_induced_abortion.pdf; see also Jenna Jerman, Rachel K. Jones & Tsuyoshi Onda, Guttmacher Inst., Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2008, at 6, 7 (2016), https://www.guttmacher.org/sites/default/files/report_pdf/characteristics-us-abortion-patients-2014.pdf.

¹⁵ That strain is all the more apparent if one considers that the vast majority—approximately 75%—of abortion patients nationwide are poor or have low incomes. Guttmacher Inst., Induced Abortions in the United States 1, supra note 14.

abortions because continuing with the pregnancy could pose a greater risk to their health.¹⁶ Indeed, while much is unknown about COVID-19, including whether it can complicate pregnancy, some pregnant people may be exposed to additional health risks from the disease. ACOG has warned that “pregnant women are known to be at greater risk of severe morbidity and mortality from other respiratory infections such as influenza and SARS-CoV. As such, pregnant women should be considered an at-risk population for COVID-19.”¹⁷

31. The window during which a patient can obtain an abortion in Ohio is limited. Pregnancy is generally forty weeks in duration, but Ohio prohibits abortion after twenty-two LMP.¹⁸ See Ohio Rev. Code § 2919.201.¹⁹

32. Although abortion is a very safe medical procedure, the health risks associated with it increase with gestational age.²⁰ As ACOG and other well-respected medical professional organizations have observed, abortion “is an essential component of comprehensive health care”

¹⁶ M. Antonia Biggs et al., Understanding Why Women Seek Abortions in the US, 13 BMC Women’s Health 7 (2013).

¹⁷ Am. Coll. of Obstetricians & Gynecologists, Practice Advisory - Novel Coronavirus 2019 (COVID-19) (last updated Mar. 13, 2020), <https://www.acog.org/clinical/clinical-guidance/practice-advisory/articles/2020/03/novel-coronavirus-2019>; see also Ctrs. for Disease Control & Prevention, Information for Healthcare Providers: COVID-19 and Pregnant Women (last updated Mar. 16, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/pregnant-women-faq.html>.

¹⁸ In fact, Ohio prohibits abortion after approximately six weeks, but the Court has preliminarily enjoined that ban. See Ohio Rev. Code § 2919.195.

¹⁹ This provision prohibits an abortion “when the probable post-fertilization age of the unborn child is twenty weeks or greater.” *Id.* “Post-fertilization age” means “the age of the unborn child as calculated from the fusion of a human spermatozoon with a human ovum,” *id.* § 2919.20(E), which is two weeks before a patient’s last menstrual period. Thus, twenty weeks post-fertilization age is twenty-two weeks LMP.

²⁰ Nat’l Acad., *supra* note 7, at 77–78, 162–63.

and “a time-sensitive service for which a delay of several weeks, or in some cases days, may increase the risks [to patients] or potentially make it completely inaccessible.”²¹

33. Patients generally seek abortion as soon as they are able, but many face logistical obstacles that can delay access to abortion care. Patients will need to schedule an appointment, gather the resources to pay for the abortion and related costs,²² and arrange transportation to a clinic, time off of work (often unpaid, due to a lack of paid time off or sick leave), and possibly childcare during appointments.²³ Ohio law requires most patients to make these arrangements multiple times even though they could just as safely obtain care in one visit. Ohio Rev. Code § 2919.193, .194 (requiring the physician to determine whether there is a detectable fetal heartbeat, which is done by ultrasound, and if there is a detectable heartbeat, prohibiting an abortion for at least twenty-four hours). Delay results in higher financial and emotional costs to the patient. Minor patients, unless emancipated, must also obtain written consent from a parent or a judicial order before they can receive care. Ohio Rev. Code § 2919.12.

34. The COVID-19 pandemic has only exacerbated these burdens on patients seeking abortion care. It has limited public transit availability, caused layoffs and other work disruptions, shuttered schools and childcare facilities, and otherwise limited patients’ options for transportation

²¹ ACOG et al., Joint Statement on Abortion Access During the COVID-19 Outbreak (Mar. 18, 2020), <https://www.acog.org/news/news-releases/2020/03/joint-statement-on-abortion-access-during-the-covid-19-outbreak>.

²² Ohio prohibits public insurance, including Medicaid, and insurance purchased on the state health exchange from covering abortion services except in the very limited circumstances where a patient’s physical health or life is at risk, or where the pregnancy is a result of rape or incest that has been reported to law enforcement. Ohio Rev. Code §§ 9.04, 3901.87; Ohio Admin. Code § 5160-17-01.

²³ Jerman et al., *supra* note 14; Sarah E. Baum et al., Women’s Experience Obtaining Abortion Care in Texas After Implementation of Restrictive Abortion Laws: A Qualitative Study, 11 PLoS One 1, 7–8, 11 (2016); Lawrence B. Finer, Lori F. Frohworth, Lindsay A. Dauphinee, Susheela Singh, & Ann M. Moore, Timing of Steps and Reasons for Delays in Obtaining Abortions in the United States, 74 Contraception 334, 335 (2006).

and childcare support during a time of recommended social-distancing.²⁴ Indeed, jobless claims are soaring due to the virus.²⁵

35. PPSWO does not use or have in supply N-95 masks, the PPE that appears to be in shortest supply in battling the COVID-19 pandemic in Ohio and around the country. PPSWO uses disposable gowns, which again I understand to be the gowns subject to shortages at this time, only in dealing with patients who present with upper respiratory symptoms consistent with COVID-19 infection. In addition, disposable gowns are used during end-of-the day cleaning.

36. In order to reduce the use of PPE, the number of staff in the operating room is reduced to the surgeon and one assistant. PPSWO has eliminated all non-essential persons in all centers including volunteers, trainees, and doulas. PPSWO does not provide inpatient care, nor is it set up to do so.

37. Patients who are prevented from obtaining abortion care will still need medical care to maintain their health and well-being. Since pregnant patients will remain users of the healthcare system as long as they are pregnant, banning surgical abortion will result in minimal, if any, conservation of PPE. By comparison, even if a provider of prenatal care reduces such care during the COVID-19 outbreak, it will still involve use of masks, non-sterile gloves, and potentially other

²⁴ ODH, *Governor DeWine Announces School Closures* (Mar. 12, 2020), <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/home/news-releases-news-you-can-use/governor-dewine-announces-school-closures>; ODH, *Governor DeWine Orders Ohio Bars & Restaurants to Close* (Mar. 15, 2020), <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/home/news-releases-news-you-can-use/governor-dewine-orders-ohio-bars-restaurants-to-close>; ODH, *Governor DeWine Announces Additional Temporary Business Closures* (Mar. 18, 2020), <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/home/news-releases-news-you-can-use/governor-dewine-announces-additional-temporary-business-closures>; Ohio Exec. Order 2020-04D; *see also* White House, *The President's Coronavirus Guidelines for America* (Mar. 16, 2020), https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf; Rebecca Shabad, *Fauci Predicts Americans Will Likely Need to Stay Home for at Least Several More Weeks*, NBC News (Mar. 20, 2020) <https://www.nbcnews.com/politics/donald-trump/fauci-predicts-americans-will-likely-need-stay-home-least-several-n1164701>.

²⁵ Scott Noll, *As Ohio Unemployment Soars, Some People Are Missing Out on Benefits*, News 5 Cleveland (Mar. 19, 2020), <https://www.news5cleveland.com/news/local-news/as-ohio-unemployment-soars-some-people-are-missing-out-on-benefits>.

PPE during multiple visits.²⁶ A patient continuing a pregnancy will thus likely require more PPE than a patient presenting for abortion.²⁷ Furthermore, every time a pregnant patient presents to the hospital for evaluation prior to labor, which could happen multiple times, this will require the use of masks and sterile gloves. An actual birth could involve anywhere from seven to ten gowns, masks, and sterile gloves.

38. Since the COVID-19 outbreak, PPSWO has taken steps to preserve much-needed medical resources and help prevent the spread of COVID-19 in the communities where we offer services. PPSWO has been and continues to follow the CDC guidelines on PPE usage during the COVID-19 outbreak including: selectively cancelling elective and non-urgent procedures and appointments for which eye protection is typically used by staff; shifting eye protection usage from disposable to reprocessing devices such as face shields; implementing extended use of eye protection, facemasks and gowns.²⁸

39. Even before the Director's Order, for example, we had reduced our patient volume in family planning centers and are delaying very early gestation patients in the surgery center to minimize repeat visits and ensure that we comply with current social-distancing recommendations. We have also made dramatic changes to the flow of our patient care. Before patients may enter a health center, we screen them for COVID-19 symptoms, including by checking for fever. Only those individuals who are thoroughly screened can proceed to the front desk to check in and

²⁶ ACOG, Examples of Alternate or Reduced Prenatal Care Schedules (Mar. 24, 2020), <https://www.acog.org/en/Clinical%20Information/Physician%20FAQs/-/media/287cefdb936e4cda99a683d3cd56dca1.ashx>.

²⁷ <https://www.nytimes.com/2020/03/26/us/coronavirus-pregnancy-maternal-health-system.html> (noting that induced labor actually requires patients to spend more time in the hospital)

²⁸ CDC guidelines can be found here: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/face-masks.html> and <https://www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/eye-protection.html>. PPSWO does vary from these guidelines when requested to. For example, the ODH inspectors requested PPE, which was provided.

provide their phone number. Patients are then asked to wait in their cars, where a staff member will call them to do as much intake as possible by phone. Patients are only permitted to reenter the health center when a room has opened for them and a clinician is available to see them.

40. PPSWO could make further progress in preserving PPE (as well as reducing overall contagion risks during the pandemic) were it not for various the Ohio restrictions on abortion I mentioned above, including requirements forcing patients to make an extra, medically unnecessary trip to the health center; forcing patients to receive an ultrasound during that unnecessary trip; and restricting medication abortion to ten weeks LMP (even though it can safely be used up to eleven weeks LMP).

Irreparable Harm Caused by the Director's Order

41. Without any clear guidance from the ODH, and in light of the statements of the Director, Governor, and Attorney General, as well as the actions of ODH, PPSWO and its physicians reasonably fear being immediately shut down and prosecuted.²⁹

42. If the Director's Order is enforced to prohibit nearly all surgical abortions, PPSWO will be forced to stop providing previability surgical abortions to patients. As a result, the Order would deprive PPSWO's patients of the freedom to make a very personal and nuanced decision in consultation with their families and preferred doctors. It would harm patients' physical, emotional, and financial wellbeing and the wellbeing of their families.

43. Moreover, even if some patients affected by the order are able to obtain an abortion after the order is lifted, they will have still suffered increased risks to their health caused

²⁹ Although only PPSWO, WMCD, and Preterm have received letters and been inspected at this time, PPGOH and NEOWC are also subject to the Director's Order, adopted policies identical to the ones in place at the clinics that received letters.

by the mandated delay in access to abortion care.³⁰ Even if each one of these patients were able to access abortion after the Governor's declared emergency ends (or the Director modifies or rescinds her order), many of the medication abortion patients would require surgical abortions instead (and correspondingly greater amounts of PPE), and some surgical abortion patients would require a comparatively more complicated surgical abortion method using the D&E technique. That technique requires more time in the clinic and a larger number of staff than aspiration abortion, another method of surgical abortion. Many will also face increased costs related to abortion, as abortion at later gestational points is more expensive and may require a two-day procedure, instead of one. These costs, in turn, will likely lead to additional delay and present an even greater hardship to vulnerable populations during the economic fallout of the COVID-19 pandemic. Moreover, because these patients would continue to be pregnant for a longer period of time, they would also be at increased risk of negative health outcomes if they are diagnosed with COVID-19.³¹ Other patients could be foreclosed from receiving an abortion altogether because the delay mandated by the order would extend their pregnancies beyond the legal gestational limit for abortion in Ohio.

44. Without access to PPSWO's abortion services and those of other Ohio abortion providers, some patients will be forced to travel hundreds of miles across state lines to try to access abortion care. Given the logistical hurdles of traveling out-of-state, particularly during the COVID-19 pandemic, these patients are likely to obtain abortions later than they would have had they accessed care from PPSWO, which necessarily entails greater risks (and potentially more PPE) than an earlier procedure. Efforts to travel are also likely to expose both patients and other

³⁰ Nat'l Acads., *supra* note 7, at 77–78, 162–63.

³¹ Ctrs. for Disease Control & Prevention, Information for Healthcare Providers: COVID-19 and Pregnant Women, *supra* note 17.


people to additional risk of contagion, and if they were able to obtain an abortion out of state, would end up using PPE in that out-of-state clinic.

45. For other patients, travel to another state will simply not be possible. As a result, these patients will be forced to carry unwanted pregnancies to term, resulting in a deprivation of their fundamental right to determine when and whether to have a child or to add to their existing families, as well as greater health and other risks to them and their children.

46. Defendants' actions threaten to delay abortion care for patients seeking abortions because of health problems until they need emergency care, or forces those patients to attempt to travel to other states to obtain that care. Absent an order from this Court, PPSWO's patients will be denied their right to access safe and legal previability abortion in Ohio, or be forced to carry pregnancies to term against their will.

47. PPSWO has 50 patients scheduled for surgical abortions in the week starting March 31, 2020.

I declare under penalty of perjury the foregoing is true and correct.



Sharon Liner, M.D.

Executed March 29, 2020

EXHIBIT A

Sharon A. Liner

2314 Auburn Ave
Cincinnati, OH 45219
sliner@ppsw.org
513-824-7866

Education:

Michigan State University, East Lansing, Michigan 48824. B.S. - Medical Technology, May 1997.

Michigan State University, College of Human Medicine, East Lansing, Michigan 48824 - Doctor of Medicine, May 2001

University of Cincinnati, Family Medicine Residency, Cincinnati, Ohio 45211 - Family Medicine Board certified since 2004

Work Experience:

Laboratory Assistant, Vitamin A Research Laboratory, 229 G.M. Trout Bldg., Michigan State University, East Lansing, Michigan 48824 February 1995-May 1997.

Direct Care Worker, Harris Development Center, 1391 East Haslett Road, Williamston, MI, 48895 May 1997-January 1999.

Western Family Physicians, 2450 Kipling Ave Ste 108, Cincinnati, OH 45239. May 2004 to July 2004.

Women's Medical Center, 3219 Jefferson Ave., Cincinnati, OH 45220 June 2009 to June 2010.

Planned Parenthood, 2314 Auburn Ave. Cincinnati, OH 45219 July 2004 to present.
Medical Director of Surgical Services 2007-2018. Medical Director 2018-present.

Community Involvement:

Family Practice Clinic - Michigan State University May 1994-August 1994.

Lansing Area AIDS Network Holiday Gift Project December 1995 and 1996.

Michigan Capitol Medical Center Surgery Volunteer May 1995-August 1995.

Family Practice Clinic – Lansing January 1996-May 1996.

Cristo Rey Clinic – Lansing September 1997-12/97.

Immunization Clinic - E. Lansing November 1998-5/99.

Friendship Clinic - Lansing September 1997-5/99.

Sharon Liner
Page 2

Honors and Awards:

Outstanding Senior Award 1997.
1997 College of Human Medicine Health Professions Open Scholarship.
1999 Michael J. Ptasnik, MD and Family Scholarship.
Chief Resident Family Practice 2003-2004.
Family Medicine Residency OB Award 2004
Cincinnati Women's Political Caucus Outstanding Achievement Honoree 2011
Planned Parenthood Southwest Ohio Region Employee of the Year Award 2015

Activities and Organizations:

Honduras Trip Clinic Team Leader 2002.
American Academy of Family Physicians. August 1997-present.
Sycamore Community Band. September 2007 – present.

Skills:

Typing and some computer skills.
D & C/ D & E up to 22 weeks LMP
IUD insertion and removal
Implant insertion and removal
Basic biopsy including endometrial
Basic ultrasound for pregnancy dating and IUD placement
ACLS certified

EXHIBIT B



**Department
of Health**

Mike DeWine, Governor
Jon Husted, Lt. Governor

Amy Acton, M.D., MPH, Director

RE: Director's Order for the Management of Non-essential Surgeries and Procedures throughout Ohio

I, Amy Acton, MD, MPH, Director of the Ohio Department of Health (ODH), pursuant to the authority granted to me in R.C. 3701.13 to "make special orders...for preventing the spread of contagious or infectious diseases" and for the purposes of preserving personal protective equipment (PPE) and critical hospital capacity and resources within Ohio, **ORDER** the following:

1. Effective 5:00 p.m. Wednesday March 18, 2020, all non-essential or elective surgeries and procedures that utilized PPE should not be conducted.
2. A non-essential surgery is a procedure that can be delayed without undue risk to the current or future health of a patient. Examples of criteria to consider include:
 - a. Threat to the patient's life if surgery or procedure is not performed;
 - b. Threat of permanent dysfunction of an extremity or organ system;
 - c. Risk of metastasis or progression of staging; or
 - d. Risk of rapidly worsening to severe symptoms (time sensitive)
3. Eliminate non-essential individuals from surgery/procedure rooms and patient care areas to preserve PPE. Only individuals essential to conducting the surgery or procedure shall be in the surgery or procedure suite or other patient care areas where PPE is required.
4. Each hospital and outpatient surgery or procedure provider, whether public, private, or nonprofit, shall establish an internal governance structure to ensure the principles outlined above are followed.
5. This action is taken to protect our healthcare workforce during this unprecedented event. This Order shall remain in full force and effect until the State of Emergency declared by the Governor no longer exists, or the Director of the Ohio Department of Health rescinds or modifies this Order.

This Order takes into consideration and is consistent with the Ohio Hospital Association's *Implementing Guidelines for the Management of Non-Essential Surgeries and Procedures Throughout Ohio* dated March 16, 2020.

COVID-19 is a respiratory disease that can result in serious illness or death, is caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that had not been previously identified in humans and can easily spread from person to person. The virus is spread between individuals who are in close contact with each other (within about six feet) through respiratory droplets produced when an infected person

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coughs or sneezes. It may be possible that individuals can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose or eyes.

On January 23, 2020, the Ohio Department of Health issued a Director's Journal Entry making COVID-19 a Class A reportable disease in Ohio.

On January 28, 2020, the Ohio Department of Health hosted the first statewide call with local health departments and healthcare providers regarding COVID-19.

On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the outbreak of COVID-19 a public health emergency of international concern.

On January 31, 2020, Health and Human Services Secretary, Alex M. Azar II, declared a public health emergency for the United States to aid the nation's healthcare community in responding to COVID-19.

On February 1, 2020, the Ohio Department of Health issued a statewide Health Alert Network to provide local health departments and healthcare providers with updated guidance for COVID-19 and revised Person Under Investigation (PUI) criteria.

On February 3, 2020, the Ohio Department of Health trained over 140 personnel to staff a call center for COVID-19, in the event it was needed.

On February 5, 2020, the Ohio Department of Health began updating and notifying the media of the number of PUIs in Ohio every Tuesday and Thursday.

On February 6, 2020, the Ohio Department of Health updated all agency assistant directors and chiefs of staff on COVID-19 preparedness and status during the Governor's cabinet meeting.

On February 7, 2020, the Ohio Department of Health and the Ohio Emergency Management Agency met to conduct advance planning for COVID-19.

On February 13, 2020, the Ohio Department of Health conducted a Pandemic Tabletop Exercise with State agencies to review responsive actions should there be a pandemic in Ohio.

On February 14, 2020, the Ohio Department of Health held a conference call with health professionals across the state. The purpose of the call was to inform and engage the healthcare community in Ohio. Presentations were provided by the Department of Health, Hamilton County Public Health, and the Ohio State University.

On February 27, 2020, the Ohio Department of Health and the Ohio Emergency Management Agency briefed the directors of State agencies during the Governor's cabinet meeting regarding preparedness and the potential activation of the Emergency Operations Center.

On February 28, 2020, the "Governor DeWine, Health Director Update COVID-19 Prevention and Preparedness Plan" was sent to a broad range of associations representing healthcare, dental, long-term

care, K-12 schools, colleges and universities, business, public transit, faith-based organizations, non-profit organizations, and local governments.

On March 2, 2020, the Ohio Department of Health activated a Joint Information Center to coordinate COVID-19 communications.

On March 5, 2020, the Ohio Department of Health hosted the Governor's Summit on COVID-19 Preparedness, a meeting with the Governor, cabinet agency directors, local health department commissioners, and their staff.

On March 6, 2020, the Ohio Department of Health opened a call center to answer questions from the public regarding COVID-19.

On March 9, 2020, testing by the Department of Health confirmed that three (3) patients were positive for COVID-19 in the State of Ohio. This confirms the presence of a potentially dangerous condition which may affect the health, safety and welfare of citizens of Ohio.

On March 9, 2020, the Ohio Emergency Management Agency activated the Emergency Operations Center.

On March 9, 2020, the Governor Declared a State of Emergency in Executive Order 2020-01D.

On March 11, 2020, the head of the World Health Organization declared COVID-19 a pandemic.

On March 11, 2020, testing by the Ohio Department of Health confirmed that one (1) more patient was positive for COVID-19 in the State of Ohio.

On March 11, 2020, the Ohio Departments of Health and Veterans Services issued a Joint Directors' Order to limit access to Ohio nursing homes and similar facilities.

On March 15, 2020, the Ohio Department of Health issued a Director's Order to limit access to Ohio's jails and detention facilities.

On March 15, 2020, the Ohio Department of Health issued a Director's Order to limit the sale of food and beverages, liquor, beer and wine to carry-out and delivery only.

On March 15, 2020, the CDC issued Interim Guidance for mass gatherings or large community events, stating that such events that consist of 50 or more people should be cancelled or postponed.

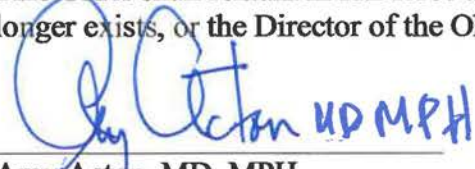
On March 15, 2020, the Ohio Department of Health issued a Director's Order closing polling stations.

Multiple areas of the United States are experiencing "community spread" of the virus that causes COVID-19. Community spread, defined as the transmission of an illness for which the source is unknown, means that isolation of known areas of infection is no longer enough to control spread.

The CDC reports that people are most contagious when they are most symptomatic (the sickest) however some spread might be possible before people show symptoms although that is not the main way the virus spreads.

Mass gatherings (50 or more persons) increase the risk of community transmission of the virus COVID-19.

Accordingly, upon guidance from the U.S. Surgeon General, American College of Surgeons and numerous other public health experts, I hereby **ORDER**, beginning at 5:00 p.m. Wednesday, March 18, 2020 all non-essential surgeries and procedures are cancelled. A non-essential surgery is a procedure that can be delayed without undue risk to the current or future health of a patient. Examples of criteria to consider include: threat to the patient's life if surgery or procedure is not performed; Threat of permanent dysfunction of an extremity or organ system; risk of metastasis or progression of staging; or risk of rapidly worsening to severe symptoms (time sensitive). Eliminate non-essential individuals from surgery/procedure rooms and patient care areas to preserve PPE. Only individuals essential to conducting the surgery or procedure shall be in the surgery or procedure suite or other patient care areas where PPE is required. Each hospital and outpatient surgery or procedure provider shall establish an internal governance structure to ensure the principles outlined above are followed. The Order is issued for the purposes of preserving personal protective equipment (PPE) and critical hospital capacity and resources within Ohio. This action is taken to protect our healthcare workforce during this unprecedented event. This Order shall remain in full force and effect until the State of Emergency declared by the Governor no longer exists, or the Director of the Ohio Department of Health rescinds or modifies this Order.


Amy Acton, MD, MPH
Director of Health

March 17, 2020

EXHIBIT C



Planned Parenthood Southwest Ohio Region

**PLANNED PARENTHOOD SOUTHWEST OHIO REGION POLICY
IMPLEMENTING OHIO DEPARTMENT OF HEALTH'S MARCH 17, 2020, ORDER
FOR THE MANAGEMENT OF NON-ESSENTIAL SURGERIES AND PROCEDURES
THROUGHOUT OHIO**

The Director of the Ohio Department of Health issued an Order for the Management of non-essential Surgeries and Procedures throughout Ohio ("Order") (see attached Order). ODH has ordered all non-essential or elective surgeries and procedures that utilize personal protective equipment ("PPE") to cease at 5:00 p.m. on March 18, 2020 "for the purpose of preventing the spread of contagious and infectious diseases and of preserving PPE and critical hospital capacity and resources in Ohio." Planned Parenthood Southwest Ohio Region ("PPSWO") hereby establishes this policy in order to ensure compliance with ODH's Order.

1. No non-essential surgeries and procedures that utilize PPE will be performed.
2. PPSWO physicians will determine on a case-by-case basis whether a surgical abortion or procedure constitutes an essential surgery or procedure that may continue to be provided under the terms of the Order. PPSWO physicians shall rely on the Director's Order and should consider the following considerations for making this decision:
 - a. The Order states that a surgery is essential if it cannot "be delayed without undue risk to the current or future health of a patient" and includes, as examples of criteria to consider, the risk to the patient of rapidly worsening to severe symptoms that make the surgery time sensitive, as well as a progression of staging.
 - b. Pregnancy has a duration of approximately forty weeks as measured from the first day of the woman's last menstrual period (LMP) and abortions are banned in Ohio beginning at 22 weeks LMP. Ohio Rev. Code § 2919.201. In addition, while abortion is an extremely safe medical procedure, delay increases the risk to the health of the patient. *See, e.g., Nat'l Acads. of Scis. Eng'g & Med., The Safety & Quality of Abortion Care in the United States at 77-78, 162-63 (2018).*
 - c. The Joint Statement by the American College of Obstetricians and Gynecologists (ACOG), the American Board of Obstetrics & Gynecology, et al., on Abortion Access During the COVID-19 Outbreak, issued March 18, 2020, which states that to "the extent that hospital systems or ambulatory surgical facilities are categorizing procedures that can be delayed during the COVID-19 pandemic, abortion should not be categorized as such a procedure" because it "is an essential component of comprehensive health care" and "a time-sensitive service for which a delay of several weeks, or in some cases days, may increase the risks [to patients] or potentially make it completely inaccessible."

CREATED: MAR 2020

REVIEWED/REVISED: MAR 21, 2020

IMPLEMENTED: MAR 2020

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d. The Ambulatory Surgery Center Association’s “COVID-19: Guidance for ASCs for Necessary Surgery,” issued March 18, 2020, which states that consideration of whether delay of a surgery is appropriate must account for risk to the patient of delay, “including the expectation that a delay of 6–8 weeks or more may be required to emerge from an environment in which COVID-19 is less prevalent.”

3. All essential surgeries and procedures that are performed by PPSWO while the Order is in effect will proceed as follows:

a. Only individuals essential to conducting the surgery or procedure shall be in the surgery or procedure suite or other patient care areas where PPE is required.

b. Every effort will be made to preserve PPE.

4. This policy, like the underlying Order, shall remain in effect until the State of Emergency declared by the Governor no longer exists, or the Director of the Ohio Department of Health rescinds or modifies the Order.



Medical Director

Approved by Governing Body: March 18, 2020

Date implemented: March 18, 2020

Date Revised: March 21, 2020

CREATED: MAR 2020
REVIEWED/REVISED: MAR 21, 2020
IMPLEMENTED: MAR 2020



**Department
of Health**

Mike DeWine, Governor
Jon Husted, Lt. Governor

Amy Acton, M.D., MPH, Director

RE: Director's Order for the Management of Non-essential Surgeries and Procedures throughout Ohio

I, Amy Acton, MD, MPH, Director of the Ohio Department of Health (ODH), pursuant to the authority granted to me in R.C. 3701.13 to "make special orders...for preventing the spread of contagious or infectious diseases" and for the purposes of preserving personal protective equipment (PPE) and critical hospital capacity and resources within Ohio, **ORDER** the following:

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3. Eliminate non-essential individuals from surgery/procedure rooms and patient care areas to preserve PPE. Only individuals essential to conducting the surgery or procedure shall be in the surgery or procedure suite or other patient care areas where PPE is required.
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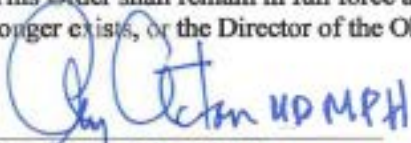
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Mass gatherings (50 or more persons) increase the risk of community transmission of the virus COVID-19.

Accordingly, upon guidance from the U.S. Surgeon General, American College of Surgeons and numerous other public health experts, I hereby **ORDER**, beginning at 5:00 p.m. Wednesday, March 18, 2020 all non-essential surgeries and procedures are cancelled. A non-essential surgery is a procedure that can be delayed without undue risk to the current or future health of a patient. Examples of criteria to consider include: threat to the patient's life if surgery or procedure is not performed; Threat of permanent dysfunction of an extremity or organ system; risk of metastasis or progression of staging; or risk of rapidly worsening to severe symptoms (time sensitive). Eliminate non-essential individuals from surgery/procedure rooms and patient care areas to preserve PPE. Only individuals essential to conducting the surgery or procedure shall be in the surgery or procedure suite or other patient care areas where PPE is required. Each hospital and outpatient surgery or procedure provider shall establish an internal governance structure to ensure the principles outlined above are followed. The Order is issued for the purposes of preserving personal protective equipment (PPE) and critical hospital capacity and resources within Ohio. This action is taken to protect our healthcare workforce during this unprecedented event. This Order shall remain in full force and effect until the State of Emergency declared by the Governor no longer exists, or the Director of the Ohio Department of Health rescinds or modifies this Order.



Amy Acton, MD, MPH
Director of Health

March 17, 2020

CREATED: MAR 2020
REVIEWED/REVISED: MAR 21, 2020
IMPLEMENTED: MAR 2020

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PPSWO'S POLICY IMPLEMENTING OHIO DEPARTMENT OF HEALTH'S MARCH 17, 2020, ORDER FOR THE MANAGEMENT OF NON-ESSENTIAL SURGERIES AND PROCEDURES THROUGHOUT OHIO

The Director of the Ohio Department of Health issued an Order for the Management of non-essential Surgeries and Procedures throughout Ohio ("Order"). ODH has ordered all non-essential or elective surgeries and procedures that utilize personal protective equipment ("PPE") to cease at 5:00 p.m. on March 18, 2020 "for the purpose of preventing the spread of contagious and infectious diseases and of preserving PPE and critical hospital capacity and resources in Ohio." PPSWO hereby establishes this policy in order to ensure compliance with ODH's Order.

As of March 18, 2020, at 5:00 p.m., the following policies and procedures will become effective:

1. No non-essential surgeries and procedures that utilize PPE will be performed.
2. Since a delay in a surgical abortion will negatively affect patient health and safety, PPSWO has determined that surgical abortion constitutes an essential surgery and may continue to be provided under the terms of the Order. PPSWO relies on the following considerations for making this decision:
 - a. The Order states that a surgery is essential if it cannot "be delayed without undue risk to the current or future health of a patient" and includes, as examples of criteria to consider, the risk to the patient of rapidly worsening to severe symptoms that make the surgery time sensitive, as well as a progression of staging. Pregnancy has a duration of approximately forty weeks as measured from the first day of the woman's last menstrual period (LMP) and abortions are banned in Ohio beginning at 22 weeks LMP. Ohio Rev. Code § 2919.201. Thus, the timeframe for a patient to obtain an abortion is limited. In addition, while abortion is an extremely safe medical procedure, it is time-sensitive, because it cannot be delayed without increasing the risk to the health of the patient. *See, e.g., Nat'l Acads. of Scis. Eng'g & Med., The Safety & Quality of Abortion Care in the United States at 77-78, 162-63 (2018).*
 - b. The recommendation of our Ambulatory Surgical Facility's Governing Body, which has determined that surgical abortions are essential surgical procedures.
 - c. The Joint Statement by the American College of Obstetricians and Gynecologists (ACOG), the American Board of Obstetrics & Gynecology, et al., on Abortion Access During the COVID-19 Outbreak, issued March 18, 2020, which states that to "the extent that hospital systems or ambulatory surgical facilities are categorizing procedures that can be delayed during the COVID-19 pandemic, abortion should not be categorized as such a procedure" because it "is an essential component of comprehensive health care" and "a time-sensitive service for which a delay

of several weeks, or in some cases days, may increase the risks [to patients] or potentially make it completely inaccessible.”

d. The Ambulatory Surgery Center Association’s “COVID-19: Guidance for ASCs for Necessary Surgery,” issued March 18, 2020, which states that consideration of whether delay of a surgery is appropriate must account for risk to the patient of delay, “including the expectation that a delay of 6–8 weeks or more may be required to emerge from an environment in which COVID-19 is less prevalent.”

3. All surgeries and essential procedures that are performed by PPSWO while the Order is in effect will proceed as follows:

a. Only individuals essential to conducting the surgery or procedure shall be in the surgery or procedure suite or other patient care areas where PPE is required.

b. Every effort will be made to preserve PPE.

4. This policy, like the underlying Order, shall remain in effect until the State of Emergency declared by the Governor no longer exists, or the Director of the Ohio Department of Health rescinds or modifies the Order.



Medical Director

Approved by Governing Body: March 18, 2020

Date implemented: March 18, 2020

EXHIBIT D



Joint Statement on Elective Surgeries

March 16, 2020 - The American College of Obstetricians and Gynecologists joins the American Association of Gynecologic Laparoscopists, American Society for Reproductive Medicine, the American Urogynecologic Society, the Society of Family Planning, the Society of Gynecologic Surgeons, the Society for Maternal-Fetal Medicine, and the Society of Gynecologic Oncology in providing the following recommendations for obstetrician-gynecologists regarding the American College of Surgeons' statement on elective surgery and the U.S. Surgeon General's recommendation that hospitals suspend elective surgeries during the COVID-19 pandemic.

The COVID-19 pandemic is a public health crisis that requires the full attention and resources of our health care systems. The pandemic is and will create stress and pressure on health care systems throughout the country, especially in under-resourced areas. As hospital systems, clinics, and communities prepare to meet anticipated increases in demand for the care of people with COVID-19, strategies to mitigate spread of the virus and to maximize health care resources are evolving. Some health systems, at the guidance of the U.S. Centers for Disease Prevention and Control, are implementing plans to cancel elective and non-urgent procedures to expand hospitals' capacity to provide critical care.

While elective surgery can serve important roles in furthering patient wellbeing, we endorse the Surgeon General's statement regarding elective surgery. Surgical procedures performed by obstetrician-gynecologists are generally medically indicated procedures necessary for the furtherance of patient health and safety. In areas where COVID-19 is particularly prevalent or where there is particular stress on the health care system, it may be advantageous to identify and modify surgical scheduling, including for procedures that are medically indicated, when a patient's health and safety would not be harmed by such delay. Decisions should be made on a local-regional level, considering the risks and resources specific to each area.

Obstetric and gynecologic procedures for which a delay will negatively affect patient health and safety should not be delayed. This includes gynecologic procedures and procedures related to pregnancy for which delay would harm patient health. Obstetrician-gynecologists and other health care practitioners should be aware of the unintended impact that policies responding to COVID-19 may have, including limiting access to time-sensitive obstetric and gynecological procedures.

This is an unusual time with rapidly evolving circumstances, and we would expect recommendations to change. We encourage individual physicians to work closely with their hospital systems to ensure that patient's needs are being met and that time-sensitive procedures are not rendered inaccessible. Please consult the CDC's Interim Guidance for Healthcare Facilities: Preparing for Community Transmission of COVID-19 in the United States.

EXHIBIT E

[ASCA COVID-19 Resources: Learn More](#)

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COVID-19: Guidance for ASCs on Necessary Surgeries

Updated March 19, 2020

In response to government guidance that hospitals and ambulatory surgery centers postpone elective surgeries during the COVID-19 pandemic, the Ambulatory Surgery Center Association (ASCA) has consulted with clinical leaders to solicit recommendations on how and when facilities should proceed with cases that, for clinical reasons, should not be postponed. A surgery may be deemed urgent and necessary if the treating physician decides that a months-long delay would increase the likelihood of significantly worse morbidity or prognosis for the patient.

First and foremost, if a procedure can be safely postponed without additional significant risk to the patient, it should be delayed until after the pandemic. The current and ongoing efforts to isolate our population and create social distancing are essential steps in saving lives by shortening and ultimately ending the COVID-19 pandemic. The health and safety of patients, along with preventing the spread of COVID-19, must be our highest priority. We concur with the American College of Surgeons that "the risk to the patient should include an aggregate assessment of the real risk of proceeding and the real risk of delay, including the expectation that a delay of 6–8 weeks or more may be required to emerge from an environment in which COVID-19 is less prevalent."

Physicians should engage with patients and families to make care decisions that minimize potential risks to patients while ensuring they receive necessary care that cannot be safely delayed. Physicians should consider the potential of post-surgical complications that could place stress on the local hospital that may lack capacity for transfers. To that end, facilities should reach out to local hospitals to establish a line of communication that ensures coordination in managing care during the pandemic.

In addition, ASCs should develop explicit controls on how to manage the infection risks of all non-patient visitors (patient caregivers, vendors, contractors, etc.) who present themselves inside the facility and should strictly prohibit all non-essential visitors. Additional social distancing policies should be employed.

Examples of cases that might still need to proceed with surgery at this time include:

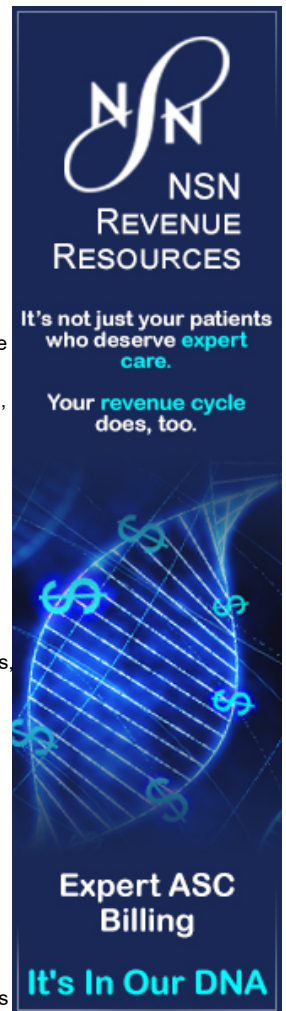
- Acute infection
- Acute trauma that would significantly worsen without surgery
- Potential malignancy
- Uncontrollable pain that would otherwise require a hospital admission
- A condition where prognosis would significantly worsen with a delay in treatment

Also, ambulatory surgery centers need to be prepared for the possibility that the pandemic may proceed to a point that strains the system such that hospitals will need to shift necessary surgeries to ASCs and/or ASCs and their resources will be required to serve the communities and the healthcare system in a different capacity. Additional guidance from regulatory agencies would govern those situations.

Finally, facilities need to recognize that the pandemic and its impact could create situations when ASCs may need to temporarily suspend services, such as:

- When a patient, staff or physician who has been in the ASC is suspected or subsequently diagnosed with COVID-19
- When there is a significant shortage of PPE (masks, gowns, gloves, etc.) that prevents safe practice of surgical cases

Clearly, this is an evolving situation and the coming days and weeks will present different challenges for healthcare facilities, such as ASCs, to grapple with as the COVID-19 pandemic runs its course. As they occur, the ambulatory surgery community will continue to work with federal, state and local health policy leaders to protect and preserve the health of the public during this crisis.





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EXHIBIT F



DAVE YOST
OHIO ATTORNEY GENERAL

Administration
Office 614-644-8901

March 20, 2020

Planned Parenthood of Southwest Ohio
Cincinnati Surgery Center
2314 Auburn Ave.
Cincinnati, OH 43219

Via Email - sbertuleit@ppsw.org

Re: March 17, 2020, Ohio Dept. of Health Order

Dear Planned Parenthood of Southwest Ohio,

On March 17, 2020, the Ohio Department of Health issued an order pursuant to the Department's powers under R.C. 3701.13. That order (attached) cancelled all non-essential or elective surgeries and procedures utilizing personal protective equipment ("PPE") as of 5:00 p.m. on March 18, 2020. The order was issued, in part, to preserve PPE for health care providers who are battling the COVID-19 pandemic that is spreading in our state and also to preserve critical hospital capacity and resources.

The Ohio Department of Health has received a complaint that your facility has been performing or continues to offer to perform surgical abortions, which necessarily involve the use of PPE. On behalf of the Department, you and your facility are ordered to immediately stop performing non-essential and elective surgical abortions. Non-essential surgical abortions are those that can be delayed without undue risk to the current or future health of a patient. The Department of Health has outlined criteria to consider when determining whether a procedure is essential (see attached order). If you or your facility do not immediately stop performing non-essential or elective surgical abortions in compliance with the attached order, the Department of Health will take all appropriate measures.

This is an unprecedented time in the state's history and everyone must do their part to help stop the spread of this disease. We look forward to receiving your confirmation that you and your facility are complying with the attached order. You may contact me by email at jonathan.fulkerson@ohioattorneygeneral.gov

Sincerely,

/s/ Jonathan Fulkerson

Jonathan Fulkerson
Deputy Attorney General

Exhibit F

EXHIBIT G

How May We Help You?



DAVE YOST
OHIO ATTORNEY GENERAL

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Statement from AG Yost regarding Enforcement of Ohio Department of Health’s Order to Preserve Personal Protective Equipment During a Pandemic Emergency

3/25/2020



(COLUMBUS, Ohio) — The following statement may be attributed to Ohio Attorney General Dave Yost:

“Establishing roles in a crisis is critical. In the current COVID-19 crisis, the Attorney General’s office plays a specific role. We are the prosecutor and the Ohio Department of Health is the police officer. My office will take quick enforcement action once an investigation is completed by the Department of Health, when facts to support a violation are determined, and a case is forwarded to my office. That is the standard protocol.

In Ohio, the Attorney General’s office lacks the extensive and explicit investigatory authority to independently take action with regard to this order. That authority lies with the Department of Health as the regulatory agency under Ohio Rev. Code 3701.04 and Ohio Admin. Code 3701-83-06. If the Department of Health determines through an investigation that Dr. Acton’s order was violated by any surgical facility in Ohio, my office stands ready to play our role and pursue legal action on behalf of the Ohio Department of Health.

Complaints regarding possible violations of Dr. Acton’s order should be filed with the Ohio Department of Health, as the department serves as the investigatory arm. In this instance, the attorney general plays the role of the prosecutor, not the cop.”

MEDIA CONTACT:
Bethany McCorkle: 614-466-1339

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- File a Charitable Complaint
- Charitable Registration
- Tobacco Enforcement

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- Concealed Carry
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- Ohio Law Enforcement Gateway
- OOCIC
- OPOTA
- Unsolved Homicides

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- Ohio's Charitable Registration System Webinars
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